

THE EASTERN CARIBBEAN SUPREME COURT
THE HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES
(IN THE BANKRUPTCY AND INSOLVENCY)
CLAIM NO. 2012/0166



BETWEEN:

WINSTON QUAMMINA

INGRID QUAMMINA

AND

PHILSON KING

SHEM KING

MELISSA OLIVER

Appearances:

Mr. D. Daniel for the Claimants;

Ms. M. Eustace for Defendants

December 20th, 2016

January 9th, 2017

ADDENDUM

The parties were invited by the court to file written submissions on a single preliminary point. The claim concerned an effort by the paper title owners of a parcel of land at Murrays Village in St.

Vincent and the Grenadines to recover possession. The defendants seek to rely on his adverse possession of the parcel in question for over twelve (12) years to defeat the claimants' claim. According to the defendant he has been in adverse possession for some fourteen (14) years before the claim was brought. Sadly it is only for eleven (11) years and eleven (11) months of this time that the defendant was an adult.

The court wished to be assisted on the sole issue as to whether the defendant, while still a minor could form the necessary intention to possess land. The court had the benefit of submissions from the claimant and concluded that no authorities had been adduced to demonstrate that minors can have the needed animus possedendi to found a claim for adverse possession of land. In fact the defendant had filed submissions with authorities in support designed to persuade the court that it was legally correct to ascribe a minor in the circumstances of this case the required animus possedendi. These submissions had not been received by me at the time the initial judgment was written.

THE DEFENDANT'S SUBMISSION:

Counsel for the defendant began from the position that minors enjoy increasing rights and liberties as they age. A minor may acquire an independent domicile at sixteen (16) years. Counsel cites Gillick (AP) respondent v West Norfolk and Wisbech Avec Health Authority and the Department of Health and Social Services (Apellant) 1985 UK HC 7 which supports the position that a minor may have the capacity to make major decisions such as whether to take a contraceptive pill or choose which parent to live with Such capacity is based upon the age and maturity of the minor child.

Counsel also relied on Powell v Mc Farlane (1977) 38 P & CR 452 ch D. In that case a squatter sought to rely on acts which were equivocal as showing animus possedendi to dispossess a paper title owner. The claimant was fourteen (14) or fifteen (15) years when he did the acts he claimed showed animus possedendi. The court noted "It is of some significance that of all the many authorities cited to me, in which titles have been established, in no one has the successful claimant been an infant who has established his title by means of possessory acts done by him on his own behalf."

This court also finds that significant. I am grateful for the assistance of counsel for the defendant but I am of the same mind as before. No authorities have been adduced which show a minor has the capacity to intend to own land when he lacks the legal capacity to hold an estate in land.


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JUSTICE BRIAN. COTTLE
HIGH COURT JUDGE